

## **Testimony Before the Senate Oversight Committee**

### **Urging Your Support of the Bipartisan Legislative Package Reforming Michigan's Unemployment Insurance System**

*November 30, 2017*

By Steve Gray, Clinical Assistant Professor and Director,  
Unemployment Insurance Clinic University of Michigan Law School  
**Commenting today on behalf of the Michigan Poverty Law Program**

#### **RE:**

HB 5165 (Rep. Graves): New ID Theft  
Verification Structure,

HB 5166 (Rep. Hertel): Fraud Penalty,

HB 5167 (Rep. Byrd): Advocacy Program,

HB 5168 (Rep. Farrington): ID Theft Protections,

HB 5169 (Rep. LaFave): Interest on  
Overpayments,

HB 5170 (Rep. Bellino): Employer Determination  
Process,

HB 5171 (Rep. Phelps): Hardship Waivers,

HB 5172 (Rep. Howrylak): Require Claimants,  
Maintain Current Address with Agency, Ensure  
Claimants Receive Fraud Notices, Providing for  
Re-Opening Period for Fraud Cases.

#### **Introduction**

Chairman MacGregor and members of Senate Oversight Committee, good morning, and thank you for the opportunity to speak before you today. I am Steve Gray, Director of the UM Law School Unemployment Insurance Clinic (UI Clinic), and I have been engaged in efforts to address systemic issues within Michigan's Unemployment Insurance Agency - specifically the problem of false fraud allegations - since 2015. Today I am speaking on behalf of the Michigan Poverty Law Program. But I want to acknowledge the work of staff and students at the University of Michigan Law School UI Clinic. Over the last two years, they have provided valuable research, expertise, information, and case examples to lawmakers and other key stakeholders.

Let me begin by thanking Rep. Graves and Rep. Hertel for their leadership on these critical issues, for bringing so many groups to the table, and for the many hours they and many others in this room dedicated to this effort. Also, thank you, Sen. MacGregor, for your commitment to this process and that of your Legislative Director, Leah Maher, and your SMPO staff person, Andy Buss.

The eight-bill package before you today will address serious flaws in our unemployment insurance system. It advances an ideal, described in the Final Report of the 2017 House Bipartisan Work Group on UI Fraud: "Everyone has a stake in a fair, accurate, and efficient unemployment insurance system; one which is protected against fraud; one with fund balances sufficient to respond to future economic downturns; and one that works for claimants and employers alike."

## **The Problem**

Beginning in 2013, the Michigan Unemployment Insurance Agency (UIA) implemented a computer system that was sold to the agency as a way to dramatically increase the agency's efficiency while reducing the incidence of claimant fraud. While the decision to switch to an automated system was good in theory, in practice, the state bought into a \$47 million computerized data-mining scheme that falsely accused thousands of formerly unemployed individuals of UI fraud.

There were approximately 50,000 fraud determinations made by the Michigan Integrated Data Automated System or "MiDAS," between October 2013 and August 2015, at which point officials acknowledged widespread problems. Officials now acknowledge that the 22,000 fraud determinations made during that period without human oversight had a 93% error rate. For 28,000 determinations made with some human involvement, the error rate, based on partially completed reviews, was closer to 44%, officials say.

People wrongly accused of fraud were subjected to highest-in-the-nation quadruple penalties for overpayments of unemployment benefits they received, along with a 12% monthly interest charge, leaving many laid off workers with tens of thousands of dollars in penalties and interest for crimes that they did not commit.

Many claimants were completely unaware of the fraud charges leveled against them until their wages and tax returns are garnished. Most of our clients didn't receive the original fraud determination and missed their 30-day appeal deadline. When they did appeal, the Agency refused to find "good cause" and claimants were forced to go to a hearing. At the hearing, Administrative Law Judges (ALJs) almost invariably reversed the Agency's no "good cause" determination.

The Agency uses very aggressive collection efforts. State law gives the Agency enormous latitude with their administrative garnishment system, and it is aggressively used, despite the discretion granted the Agency in statute.

Fraud determinations have very serious consequences. Countless clients relate the shame they experience from being found an 'unemployment cheater.' And with the 400% penalties assessed on top of restitution and interest, many report sleepless nights worrying about how they will pay these huge sums. One client of our clinic was fired after her employer learned that she was determined by Agency to have committed fraud, even though shortly after she was completely exonerated at an ALJ hearing.

### **A Collaborative Process Leads to Consensus on Needed Reforms**

Others today have already outlined the provisions of the eight bills in this package, and the extensive, collaborative process which led to their introduction. I will not repeat what has already been shared in my comments. However, attached, please find a detailed review of the bill package, prepared by UI Clinic students Rita Samaan and Sean Higgins, working with Stephanie Gliddon, Director of Public Affairs with the MI AFL-CIO.

### **Starting a New Chapter**

Michigan's UI system has started a new chapter. There are new leaders in the administration: Ms. Wanda Stokes, Director of the Talent Investment Agency, has publicly acknowledged and apologized for the harm done to claimants; the Agency's most recent Acting Director, Mr. Bruce Noll was fully engaged in the bipartisan workgroup, and met individually with claimant advocates; our new UI Agency Director, Ms. Michelle Beebe, has attended each workgroup meeting since moving to Michigan from her home state of Utah, facilitated communications with the US Dept. of Labor during critical steps in the bill drafting process, and has initiated regular advisory meetings open to all claimant advocates. New agency leadership, combined with committed legislative leaders such as Rep. Graves, Rep. Hertel, and Senator MacGregor, as well as the committed stakeholders in this room, make me hopeful that an improved UI system in our state is possible.

### **In Conclusion**

I urge you to support House Bills 5165-5172. Thank you for your time and attention. Please do not hesitate to contact me with questions or concerns. I would be happy to answer any questions you may have now.

### **Contact Information**

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Bill No., Issue, Sponsor, & MCL §	Current Law	New Law
5165 (Graves): New ID Theft Verification Structure  MCL § 421.54(f)–(h)	The Agency lacked clear procedures to verify imposter theft claims.	<ul style="list-style-type: none"> <li>-Employer may file reports alerting the Agency that a claim is fraudulent because the individual who filed the claim is an imposter</li> <li>-Upon receiving an employer report, the Agency may contact the imposter and demand proof of identity.</li> <li>-An affected individual may submit an affidavit to the employer or the Agency stating the individual did not file for benefits.</li> <li>-Upon receiving a claimant affidavit, the Agency must cancel all payments, issue a determination, and conduct an investigation.</li> <li>-If the Agency determines that imposter fraud occurred, it must credit the employer's account for the amount of the fraud within 60 days after the determination becomes final.</li> </ul>
5166 (Hertel): Fraud Penalty  MCL § 421.54(b)	Michigan's current penalty rate for fraud is 200% of the overpayment for benefit payments under \$500, and 400% percent of the overpayment for benefit payments exceeding \$500.	For fraud other than identity fraud: <ol style="list-style-type: none"> <li>1. Penalty will be 100% of overpayment for first instance</li> <li>2. Penalty will be 150% of overpayment for subsequent instances.</li> </ol> For imposters who commit identity fraud, the penalty will be equal to 400% of the overpayment.
5167 (Byrd): Advocacy Program  § 421.5(a)	The Act creates an advocacy program to provide claimants and employers advocacy assistance with administrative hearings. Current Agency policy excludes claimants accused of fraud from participation.	The new law allows claimants accused of fraud to participate in the advocacy program. If a final decision determines a claimant committed fraud UIA may recover an amount equal to the representation fees associated with use of the advocacy program.
5168 (Farrington): ID Theft Protections  § 421.28	Fills gap in current law	Claimants must provide the Agency with their social security number, their driver's license (or state ID card number or acceptable documents provided for in I-9 forms).  Agency shall request, but not require, individuals applying for benefits to submit their base period employer's unemployment agency account number and federal employer ID number.  The Agency will use all information and documents individuals applying for benefits provide to verify identity before making an initial payment on the individual's claim.

5169 (LaFave): Interest on Overpayments  MCL § 421.15	Michigan charges 1% monthly interest on all overpayments.	Three major changes: 1. No interest will be assessed if the overpayment was due to an agency error. 2. Interest begins accruing one year after a final adjudication if there was a non-fraud overpayment not cause by agency error. 3. Interest applies immediately if fraud is found.
5170 (Bellino): Employer Faliure to Respond Determination Process  MCL § 421.20	The Agency's process for employer determinations when they fail to respond to requests for information was confusing, time consuming, and ineffective.	-An employer receives a determination if the employer fails to provide timely and adequate information in response to the Agency's request for information. -To receive a determination, an employer must fail to respond 5 or more times to request for information OR fail to respond to equal to or greater than 2% of all the requested received during the prior calendar year. -Benefits paid to a claimant as a result of the employer's or employer's agents failure to provide timely or adequate information must be charged to the employer's account and the employer's account must not be credited.
5171 (Phelps): Hardship Waivers  MCL § 421.62	The Agency is required to waive repayment of restitution if the claimant's <b>disposable household income</b> falls below the Federal Poverty Line.	Clarifies the process for granting waiver of repayment of restitution for financial hardship -The Agency must grant a claimant's hardship waiver application if the claimant's <b>average net household income and household cash assets</b> falls below <b>150%</b> of the Federal Poverty Line. -The Agency may not consider a new waiver application from a claimant within 6 months of receiving an application from the claimant. -On January 31 of each year, the Agency must produce a written report detailing (a) its hardship waiver procedures, (b) the number of applications received, (c) the number of individuals who submitted an application, (d) the number of waivers granted, & (e) the number of waivers denied with the reason for denial
5172 (Howrylak): Re-Opening Period for Fraud Cases a) Ensure Accused Gets Notice; b) Require claimants maintain current address with agency for one year.  § 421.32a	Currently, the Agency only sends notifications to last known address, which may or may not be the claimants current address given the amount of time that elapses after a claimant stopped claiming benefits.	Three-part reform: 1. Claimants are required to update their address with Agency for the entirety of their benefit year. 2. The Agency will send fraud notices to all known addresses (based on addresses on file with the Agency, Treasury, and Secretary of State) 3. Good cause to reopen will include incidents where determinations/redeterminations are sent to the wrong address, so long as corroborating evidence can be supplied by the accused.